

**ATTACHMENT H**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 79-1112 and Consolidated Cases

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CHEMICAL MANUFACTURERS ASSOCIATION, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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SETTLEMENT AGREEMENT

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Industry petitioners and respondents United States Environmental Protection Agency, et al., ("EPA") intending to be bound by this document, hereby stipulate and agree as follows:

1. This agreement is intended to act as a settlement of all of the issues raised by industry petitioners in these consolidated cases.

2. The "dual definition of source" and "reconstruction" issues are moot, because of the publication of final regulations deleting those requirements. 46 Fed. Reg. 50766 (October 14, 1981).

3. EPA has proposed to delete the "vessel emissions" requirements and stayed them pending final action on the proposal. 46 Fed. Reg. 61612, 61613 (December 17, 1981).

EPA shall make good faith best efforts to take final action on the proposal by May 14, 1982.

4. EPA shall propose in the Federal Register the regulatory amendments which appear in Exhibit A to this agreement (the "Exhibit A amendments") or such amendments as would have substantially the same effect as the Exhibit A amendments. EPA shall make good faith best efforts (a) to do so within 90 days from the date of execution of this agreement and (b) to take final action on the proposed amendments within 150 days from the date the proposal appears in the Federal Register. In addition, EPA shall not extend the period for initial comment on the proposed amendments beyond 60 days.

5. The American Iron and Steel Institute, et al., petitioners in No. 80-2223, do not join in this settlement with respect to the language set forth in Exhibit A at paragraphs A(4), B(4), C(5), D(5) and E(5) (relating to the non-inclusion of increases and decreases of fugitive emissions in determinations of whether a change at a stationary source results in a significant net emissions increase) as it applies to the iron and steel manufacturing industry and reserve the right to challenge that language, if promulgated with substantially the same effect, in a court with proper jurisdiction.

6. EPA currently plans to begin rulemaking within the next several months to revise the national ambient air quality standards ("NAAQS") for "particulate matter". EPA intends to propose, not only new concentration levels for the NAAQS, but

also a new definition of "particulate matter" which would exclude particles above a size that EPA will determine after further analysis of the relevant scientific information. When EPA proposes a new size cutoff for purposes of the NAAQS, it shall also propose (a) a new size cutoff for PSD purposes that would remain in effect indefinitely (the "permanent PSD cutoff") and (b) an interim size cutoff for PSD purposes that would remain in effect until EPA takes final action on the permanent PSD cutoff. The interim cutoff will exclude only those particles which clearly appear not to pose substantial health and welfare risks and therefore are highly likely to be excluded permanently. EPA shall make good faith best efforts (a) to propose the permanent and interim PSD cutoffs by June 1, 1982, and (b) to take final action on the interim PSD cutoff by September 30, 1982. In addition, EPA shall not extend the period for initial comment on the interim PSD cutoff beyond 45 days.

7. On or before the date that it proposes the amendments described in paragraph 4 above, EPA shall also publish in substance the following guidance in the Federal Register:

- a. If a violation of a PSD increment is discovered, the state has an obligation under 40 C.F.R. 51.24(a)(3) to adopt such revisions to its state implementation plan ("SIP") as would be necessary to cure the violation, and to submit them to EPA for approval within 60 days after discovery of the violation or within such longer period as EPA may determine after consultation with the state. EPA will postpone, until it takes final action on a permanent PSD cutoff for particulate matter, the time by which a state must submit a SIP revision to

cure a violation of an increment for particulate matter, if the state requests such a postponement.

- b. Under any basic permit program that consists of the requirements outlined by 40 C.F.R. 51.18(a)-(i), and hence no requirement relating to PSD increments, the permitting authority may issue a permit even if the modeling shows that the project in question would cause or contribute to a violation of a PSD increment for particulate matter.
- c. In revising the Emissions Offset Interpretative Ruling in January 1979 and in providing guidance to the states for the preparation of SIP revisions to meet the requirements of Section 173 of the Act, EPA stated that "in determining the lowest achievable emission rate (LAER), the reviewing authority may consider transfer of technology from one source type to another where such technology is applicable." 44 Fed. Reg. 3280 (January 16, 1979); 44 Fed. Reg. 20379 (April 4, 1979). EPA interprets that statement to mean merely that the Agency would not disapprove a SIP revision which required technology transfer for LAER determinations. The statement does not mean that EPA would approve a SIP revision which sought to incorporate the Section 173 requirements only if the revision required technology transfer. To the contrary, an express prohibition against technology transfer in the revision would not be grounds for disapproval.

8. As expeditiously as practicable, EPA shall (a) propose in the Federal Register the regulatory amendments which appear in Exhibit B to this agreement (the "Exhibit B amendments"), or such amendments as would have substantially the same effect as the Exhibit B amendments, and (b) take final action on the proposed amendments. In addition, EPA shall not extend the period for initial comment on the proposed amendments beyond 60 days.

9. EPA shall hold a meeting in the first week of April 1982 to report on its progress in preparing the Federal Register

notice for the proposal of the amendments described in paragraph 8 of this agreement and to receive comment on that progress. EPA shall hold meetings for the same purposes every forty days after the first meeting until the notice appears in the Federal Register. EPA shall invite each of the industry petitioners, and may invite anyone else, to participate in those meetings.

10. Before the Administrator signs the Federal Register notice described in paragraph 9 of this agreement, or the Federal Register notice for the proposed amendments described in paragraph 4, EPA shall provide industry petitioners with an opportunity to review and comment on that notice. EPA may provide anyone else the same opportunity.

11. If an industry petitioner demonstrates to EPA that, in the period before the Agency takes final action on the proposals described in paragraphs 4, 6 or 8, the petitioner will suffer significant harm from one of the provisions under challenge in these cases, then EPA shall consider granting the petitioner interim relief from that provision.

12. If EPA promulgates a final amendment that has substantially the same effect as one of the amendments in 46 Fed. Reg. 61613, Exhibit A or Exhibit B, any industry petitioner who in these cases sought review of the amended provision shall move voluntarily to dismiss its petition as to that provision. To the extent that EPA fails to promulgate final amendments which have

substantially the same effect as the amendments in 46 Fed. Reg. 61613, Exhibit A and Exhibit B, industry petitioners reserve their rights to proceed further with this litigation.

13. To the extent that EPA fails to make good faith best efforts to meet the target deadlines specified in paragraphs 3, 4, and 6 of this agreement, or to take the actions specified in paragraph 8 as expeditiously as practicable, industry petitioners reserve their rights to pursue this litigation.

14. As soon as practicable after the date of execution of this agreement, EPA shall notify the Regional Administrator of each EPA Region and the director of each state air pollution control agency of the terms of this settlement agreement.

15. Nothing in this agreement shall be deemed to waive any right any party may have, including, but not limited to, any right to challenge any future EPA action or defend this agreement, except to the extent that this agreement expressly provides otherwise.

IN WITNESS WHEREOF, the parties have executed this  
Settlement Agreement this 22<sup>nd</sup> day of February, 1982.

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## EXHIBIT A

### A. Requirements for State PSD Plans

Section 51.24 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. By adding a new subparagraph (b)(1)(iii) to read as follows:  
"(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:  
[Reserved].";

2. By adding to subparagraph (b)(2)(iii)(e)(1) an "(1)" after the word "prohibited" and the following clause just before the semi-colon at the end of the subparagraph: ", or (1) under any enforceable condition which was established after [the effective date of this clause]";

3. By adding to subparagraph (b)(2)(iii)(f) an "(1)" after the word "prohibited" and the following clause at the end of the subparagraph: ", or (2) under any enforceable condition which was established after [the effective date of this clause].";

4. By adding a new subparagraph (b)(2)(iv) to read as follows:  
"(iv) Increases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this section whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

5. By deleting "federally" in subparagraph (b)(3)(vi)(b), deleting the "; and" at the end of the subparagraph, and putting a period in its place;

6. By deleting subparagraph (b)(3)(vi)(c);

7. By adding a new subparagraph (b)(3)(viii) to read as follows: "A decrease in actual emissions of a hydrocarbon compound which is listed in Table 1 of EPA's 'Recommended Policy on Control of Volatile Organic Compounds', 42 FR 35314 (July 8, 1977), is not creditable against an increase in emissions of any hydrocarbon compound which is not listed in that table.";

8. By deleting "federally" in the second sentence of subparagraph (b)(4);

9. By revising subparagraph (b)(17) to read as follows: "(17) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

10. By deleting subparagraph (b)(23)(iii) [relating to Class I areas];

11. By deleting subparagraph (i)(4)(ii) and redesignating subparagraph (i)(4)(iii) as (i)(4)(ii);

12. By deleting the parenthetical in subsection k);

13. By deleting subparagraph (s)(2)(iv)(b), redesignating subparagraph (s)(2)(iv)(c) as (s)(2)(iv)(b), and revising subparagraph (s)(2)(v) to read as follows: "The provisions of subsection (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.".

B. New Source Review for PSD Purposes

Section 52.21 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. By adding a new subparagraph (b)(1)(iii) to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

2. By adding to subparagraph (b)(2)(iii)(e)(1) an "(1)" after the word "prohibited" and the following clause just before the semi-colon at the end of the subparagraph: ", or (1) under any enforceable condition which was established after [the effective date of this clause]";

3. By adding to subparagraph (b)(2)(iii)(f) an "(1)" after the word "prohibited" and the following clause at the end the of subparagraph: ", or (2) under any enforceable condition which was established after [the effective date of this clause].";

4. By adding a new subparagraph (b)(2)(iv) to read as follows: "(iv) Increases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this section whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

5. By deleting "federally" in subparagraph (b)(3)(vi)(b), deleting the "; and" at the end of the subparagraph, and putting a period in its place;

6. By deleting subparagraph (b)(3)(vi)(c);

7. By adding a new subparagraph (b)(3)(vii) to read as follows: "A decrease in actual emissions of a hydrocarbon compound which is listed in Table 1 of EPA's 'Recommended Policy on Control of Volatile Organic Compounds', 42 FR 35314 (July 8, 1977), is not creditable against an increase in emissions of any hydrocarbon compound which is not listed in that table.";

8. By deleting "federally" in the second sentence of subparagraph (b)(4);

9. By revising subparagraph (b)(17) to read as follows: "(17) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

10. By deleting subparagraph (b)(23)(iii) [relating to Class I areas];

11. By deleting subparagraph (i)(4)(vii) and redesignating subparagraph (i)(4)(viii) as (i)(4)(vii);

12. By deleting the parenthetical in subsection (k);

13. By deleting subparagraph (v)(2)(iv)(b), redesignating subparagraph (v)(2)(iv)(c) as (v)(2)(iv)(b), and revising subparagraph (v)(2)(v) to read as follows: "The provisions of subsection (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.".

C. Emission Offset Interpretative Ruling

Appendix S of Part 51 of Title 40 of the Code of Federal Regulations, as amended at 46 FR 50766 (October 14, 1981), is proposed to be amended as follows:

1. By deleting "federally" in the second sentence of subparagraph II.A.3.

2. By adding a new subparagraph II.A.4(iii) to read as follows:  
"(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:  
[Reserved].";

3. By adding to subparagraph II.A.5(iii)(e)(1) an "(1)" after the word "prohibited" and the following clause just before the semicolon: ", or (ii) under any enforceable condition which was established after [the effective date of this clause]";

4. By adding to subparagraph II.A.5(iii)(f) an "(1)" after the word "prohibited" and the following clause at the end of the subparagraph: ", or (2) under any enforceable condition which was established after [the effective date of this clause].";

5. By adding a new subparagraph II.A.5(iv) to read as follows:  
"(iv) Increases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this Ruling whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

6. By deleting "federally" in subparagraph II.A.6(v)(b);
7. By deleting the "; and" in subparagraph II.A.6(v)(c) and putting a period in its place;
8. By deleting subparagraph II.A.6(v)(d);
9. By adding a new subparagraph II.A.6(vii) to read as follows: A decrease in actual emissions of a hydrocarbon compound which is listed in Table 1 of EPA's 'Recommended Policy on Control of Volatile Organic Compounds', 42 FR 35314 (July 8, 1977), is not creditable against an increase in emissions of any hydrocarbon compound which is not listed in that table.";
10. By revising subparagraph II.A.12 to read as follows:  
"(12) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";
11. By deleting paragraphs II.D. - II.G.;
12. By revising paragraph IV.C.3. to read as follows: "3. Operating hours and source shutdown. A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels (see initial discussion to this Section C), provided that the shutdown or curtailment occurred after December 21, 1976. Emission offsets that involve reducing operating hours or production or source shutdowns must be legally enforceable, as in the case for all emission offset situations.";
13. By deleting footnote 9;
14. By deleting paragraph IV.C.5. and renumbering paragraph IV.C.6. as IV.C.5.

D. State Plans for New Source Review for Nonattainment Purposes

Section 51.18 of Title 40 of the Code of Federal Regulations, as amended at 46 FR 50766 (October 14, 1981), is proposed to be amended as follows:

1. By deleting "federally" in the second sentence of subparagraph (j)(1)(iii);
2. By adding a new subparagraph (j)(1)(iv)(c) to read as follows: "(c) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this subsection whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";
3. By adding to subparagraph (j)(1)(v)(c)(5)(i) an "(A)" after the word "prohibited" and the following clause just before the semi-colon: ", or (B) under any enforceable condition which was established after [the effective date of this clause]";
4. By adding to subparagraph (j)(1)(v)(c)(6) an "(i)" after the word "prohibited" and the following clause at the end of the subparagraph: ", or (ii) under any enforceable condition which was established after [the effective date of this clause].";
5. By adding a new subparagraph (j)(1)(v)(d) to read as follows: "(d) Increases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this subsection whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved].";



6. By deleting "federally" in subparagraph (j)(1)(vi)(e)(2);
7. By deleting subparagraph (j)(vi)(e)(4);
8. By adding a new subparagraph (j)(1)(vi)(e) to read as follows: "A decrease in actual emissions of a hydrocarbon compound which is listed in Table 1 of EPA's 'Recommended Policy on Control of Volatile Organic Compounds', 42 FR 35314 (July 8, 1977), is not creditable against an increase in emissions of any hydrocarbon compound which is not listed in that table.";
9. By revising subparagraph (j)(1)(xiv) to read as follows: "(xiv) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";
10. By revising subparagraph (j)(3)(ii)(e) to read as follow: "(e) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the shutdown or curtailment occurred after a reasonable date specified in the plan.";
11. By deleting "federally" from subparagraph (j)(3)(ii)(e);
12. By deleting paragraph (j)(4) and renumbering paragraph (j)(5) as (j)(4).

E. Restrictions on Construction for Nonattainment Areas

Section 52.24 of Title 40 of the Code of Federal Regulation, as amended at 46 FR 50766 (October 14, 1981), is proposed to be amended as follows:

1. By deleting "federally" in the second sentence of paragraph (f)(3);

2. By adding a new subparagraph (f)(4)(iii) to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

3. By adding to subparagraph (f)(5)(iii)(e)(1) an "(1)" after the word "prohibited" and the following clause just before the semi-colon: ", or (1) under any enforceable condition which was established after [the effective date of this clause]";

4. By adding to subparagraph (f)(5)(iii)(f) a "(1)" after the word "prohibited" and the following clause at the end of the subparagraph: ", or (2) under any enforceable condition which was established after [the effective date of this clause].";

5. By adding a new subparagraph (f)(5)(iv) to read as follows: "(iv) Increases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this section whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

6. By deleting "federally" in subparagraph (f)(6)(v)(b);

7. By deleting subparagraph (f)(6)(v)(d);

8. By adding a new subparagraph (f)(6)(vii) to read as follows: "A decrease in actual emissions of a hydrocarbon compound which is listed in Table 1 of EPA's Recommended Policy on Control of

Volatile Organic Compounds', 42 FR 35314 (July 8, 1977), is not creditable against an increase in emissions of any hydrocarbon compound which is not listed in that table.";

8. By revising paragraph (f)(12) to read as follows:  
"(12) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

9. By deleting subsection (h) and renumbering the succeeding subsections accordingly.

## EXHIBIT B

### A. Requirements for State PSD Plans

Section 51.24 of Title 40 of the Code of Federal Regulations, as amended, is proposed to be amended as follows:

1. By adding a new subparagraph (b)(2)(v) to read as follows: "(v) A major modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.";
2. By deleting "actual" wherever it appears in paragraph (b)(3), except in subparagraph (b)(3)(vi)(b);
3. By adding a new subparagraph (b)(3)(ix) to read as follows: "(ix) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.
4. By deleting the second sentence, and the word "two-year" in the first sentence, of subparagraph (b)(21)(ii);
5. By adding a new subparagraph (b)(23)(ii) to read as follows: "(ii) A net emissions increase in a source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in subparagraph (i) above."

B. New Source Review for PSD Purposes

Section 52.21 of Title 40 of the Code of Federal Regulations, as amended, is proposed to be amended as follows:

1. By adding a new subparagraph (b)(2)(v) to read as follows: "(v) A major modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.";

2. By deleting "actual" wherever it appears in paragraph (b)(3), except in subparagraph (b)(3)(vi)(b);

3. By adding a new subparagraph (b)(3)(ix) to read as follows: "(ix) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.";

4. By deleting the second sentence, and the word "two-year" in the first sentence, of subparagraph (b)(21)(ii);

5. By adding a new subparagraph (b)(23)(ii) to read as follows: "(ii) A net emissions increase in a source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in subparagraph (i) above.".

C. Emission Offset Interpretative Ruling

Appendix S of Part 51 of Title 40 of the Code of Federal Regulations, as amended, is proposed to be amended as follows:

1. By adding a new subparagraph II.A.5(v) to read as follows: "(v) A major modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.";

2. By deleting "actual" wherever it appears in paragraph II.A.6, except in subparagraph II.A.6(v)(b);

3. By adding a new subparagraph II.A.6(viii) to read as follows: "(viii) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.

4. By adding a new subparagraph II.A.10(ii) to read as follows: "(ii) A net emissions increase in a source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in subparagraph (i) above.";

5. By deleting the second sentence, and the word "two-year" in the first sentence, of subparagraph II.A.13(ii).

6. By revising so much of subsection IV.C. as precedes paragraph IV.C.1. to read as follows: "C. Baseline for determining credit for emission and air quality offsets. The baseline for determining credit for emission and air quality offsets will be either the potential to emit (as calculated in terms of pounds

of pollutant emitted per hour) or the actual emissions of the source from which offset credit is to be obtained.";

7. By deleting paragraph IV.C.1., IV.C.2, IV.C.5., and IV.C.6 and renumbering the remaining paragraphs accordingly.

D. State Plans for New Source Review for Nonattainment Purposes

Section 51.18 of Title 40 of the Code of Federal Regulations, as amended, is proposed to be amended as follows:

1. By adding a new subparagraph (j)(1)(v)(e) to read as follows: "(e) A modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.";

2. By deleting "actual" wherever it appears in subparagraph (j)(1)(vi), except in subparagraph (j)(1)(vi)(e)(2);

3. By adding a new subparagraph (j)(1)(vi)(h) to read as follows: "(h) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.";

4. By inserting an "(a)" just before "'Significant'" in subparagraph (j)(1)(x) and adding a new subparagraph (j)(1)(x)(b) to read as follows: "(b) A net emissions increase in a source potential to emit (as calculated in terms of pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in (a) above.";

5. By deleting the second sentence, and the word "two-year" in the first sentence, of subparagraph (j)(1)(xi)(b);

6. By revising subparagraph (j)(3)(i) to read as follows: "(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection, the baseline for determining credit for emissions reductions is either (a) the potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or (b) the actual emissions of the source from which offset credit is to be obtained.";

7. By deleting subparagraphs (j)(3)(ii)(a) and (b) and renumbering the remaining subparagraphs accordingly;

8. By adding a new subparagraph (j)(3)(ii)(f) to read as follows: "(f) By the time the source is to commence operation, offsetting emissions shall be sufficient so as to represent (when considered together with the plan provisions required under Section 172 of the Act) reasonable further progress (as defined in the plan provisions required under Section 172 of the Act).".

**F. Restrictions on Construction for Nonattainment Areas**

Section 52.24 of Title 40 of the Code of Federal Regulations, as amended, is proposed to be amended as follows:

1. By adding a new subparagraph (b)(5)(v) to read as follows: "(v) A modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's potential to emit (as calculated in terms of pounds



of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.";

2. By deleting "actual" wherever it appears in paragraph (b)(6), except in subparagraph (b)(6)(v)(b);

3. By adding a new subparagraph (b)(6)(viii) to read as follows: "(viii) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.";

4. By inserting an "(i)" just before "Significant" in paragraph (b)(10) and adding a new subparagraph (b)(10)(ii) to read as follows: "(ii) A net emissions increase in a source's potential to emit (as calculated ~~in terms of~~ pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in subparagraph (i) above.";

5. By deleting the second sentence, and the word "two-year" in the first sentence, of subparagraph (b)(13)(ii).